



General Assembly

Substitute Bill No. 973

January Session, 2011

* _____SB00973AGEHS_031011_____*

**AN ACT CONCERNING THE DETERMINATION OF UNDUE HARDSHIP
FOR PURPOSES OF MEDICAID ELIGIBILITY.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective July 1, 2011*) (a) Except as provided in
2 subsection (c) of this section, the Commissioner of Social Services shall
3 waive the imposition of a penalty period pursuant to subsection (a) of
4 section 17b-261 of the general statutes or subsection (a) of section 17b-
5 261a of the general statutes if such imposition would create an undue
6 hardship.

7 (b) For purposes of this section, "undue hardship" exists when (1)
8 the life or health of the applicant would be endangered by the
9 deprivation of medical care, or the applicant would be deprived of
10 food, clothing, shelter or other necessities of life, (2) the applicant is
11 otherwise eligible for medical assistance under section 17b-261 of the
12 general statutes but for the imposition of the penalty period, (3) if the
13 applicant is receiving long-term care services at the time of the
14 imposition of a penalty period, the provider of long-term care services
15 has notified the applicant that such provider intends to discontinue
16 providing long-term care services to the applicant because of
17 nonpayment, (4) if the applicant is not receiving long-term care
18 services at the time of the imposition of a penalty period, a provider of
19 long-term care services has refused to provide long-term care services

20 to the applicant due to lack of a payment source, and (5) no other
21 person or organization is willing and able to provide long-term care
22 services to the applicant.

23 (c) The commissioner shall not waive the imposition of a penalty
24 period pursuant to subsections (a) and (b) of this section if (1) the
25 applicant made a transfer or assignment of assets to deliberately
26 impoverish such applicant in order to obtain or maintain eligibility for
27 medical assistance, unless the applicant (A) suffers from dementia or
28 other cognitive impairment and cannot explain the transfer or
29 assignment of assets, (B) suffered from dementia or other cognitive
30 impairment at the time the transfer or assignment of assets was made,
31 or (C) was exploited into making the transfer or assignment of assets
32 due to dementia or other cognitive impairment, or (2) the transfer or
33 assignment of assets was made by the applicant's legal representative
34 or the joint owner of the assets, provided such legal representative or
35 joint owner did not exploit the applicant into making such transfer or
36 assignment.

37 Sec. 2. (NEW) (*Effective July 1, 2011*) (a) As used in this section and
38 section 1 of this act, "applicant" means an applicant for or recipient of
39 medical assistance pursuant to section 17b-261 of the general statutes.

40 (b) If the Commissioner of Social Services, in determining an
41 applicant's eligibility for medical assistance pursuant to section 17b-
42 261 of the general statutes, intends to impose a penalty period as a
43 result of a transfer or assignment of assets pursuant to section 17-261 of
44 the general statutes or section 17b-261a of the general statutes, the
45 commissioner shall provide a preliminary notice to the applicant. Such
46 notice shall include a statement that the applicant may file a claim of
47 undue hardship, as defined in section 1 of this act, or provide evidence
48 to rebut the presumption resulting in the imposition of a penalty
49 period pursuant to subsection (a) of section 17b-261a of the general
50 statutes. The applicant shall file such claim or provide such evidence
51 not later than fifteen days after the date on which the preliminary
52 notice is postmarked. The commissioner shall grant one extension of

53 time to file such claim or provide such evidence if requested by the
54 applicant and shall grant additional extensions of time if reasonable.
55 Failure to file a claim of undue hardship under this subsection shall
56 not prohibit an applicant from making a claim of undue hardship at an
57 administrative hearing.

58 (c) If the applicant files a claim of undue hardship pursuant to
59 subsection (b) of this section or provides evidence to rebut the
60 presumption resulting in the imposition of a penalty period pursuant
61 to subsection (a) of section 17b-261a of the general statutes, the
62 commissioner shall provide an interim decision notice to the applicant
63 not later than ten days after receiving such claim or evidence. The
64 interim decision notice shall inform the applicant whether or not (1)
65 the commissioner has determined that undue hardship exists or the
66 presumption has been rebutted, and (2) the penalty period for the
67 transfer or assignment of assets indicated in the preliminary notice
68 shall be waived or shall not be imposed.

69 (d) When the commissioner determines the eligibility of an
70 applicant for medical assistance under section 17b-261 of the general
71 statutes, the commissioner shall provide a final decision notice to the
72 applicant. Such final decision notice shall include (1) a statement
73 confirming any determination the commissioner made with regard to a
74 transfer or assignment of assets pursuant to this section, and (2) a
75 description of the applicant's appeal rights.

76 (e) If an applicant receives notice from a provider of long-term care
77 services that the provider intends to discontinue providing or refuses
78 to provide long-term care services to the applicant because of the
79 imposition of a penalty period against the applicant pursuant to
80 subsection (a) of section 17b-261 of the general statutes or subsection
81 (a) of section 17b-261a of the general statutes, the applicant shall have
82 no more than sixty days after receiving such notice to file a claim of
83 undue hardship with the commissioner. Not later than ten days after
84 receiving such claim, the commissioner shall provide a final decision
85 notice to the applicant. Such final decision notice shall inform the

86 applicant whether or not (1) the commissioner has determined that
87 undue hardship exists, and (2) the penalty period shall be waived.

88 (f) (1) If an applicant is receiving long-term care services in a
89 nursing home facility, as defined in section 19a-521 of the general
90 statutes, and the nursing home facility demonstrates that the applicant
91 is not competent, the commissioner shall grant an extension of time to
92 claim undue hardship pursuant to subsection (b) of this section to
93 allow a legal representative to be appointed to act on behalf of the
94 applicant.

95 (2) The commissioner shall accept any claim filed pursuant to
96 subsection (b) of this section by a nursing home facility, as defined in
97 section 19a-521 of the general statutes, and allow the nursing home
98 facility to represent the applicant with regard to such claim if the
99 applicant or the legal representative of the applicant gives permission
100 to the nursing home facility to file a claim pursuant to subsection (b) of
101 this section.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2011</i>	New section
Sec. 2	<i>July 1, 2011</i>	New section

AGE

Joint Favorable Subst. C/R

HS